THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11181 OF 2005

Dated: 7th December, 2005.

Between:

1. M/s. Sunny Textiles Pvt. Ltd., Ganerwala,

House No.14-4-45, Begum Bazar, Hyderabad,

rep. by its Managing Director

Sri Anand Kumar Ganeriwal, and 4 others. .. Petitioners

And

1. A.P. State Financial Corporation, Chirag Ali Lane,

Hyderabad, rep. by its Managing Director

and another. …Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11181 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the action of the A.P. State Financial Corporation in seeking to recover a sum of Rs.19,90,654/- along with interest and in not issuing No Due Certificate to the 1st petitioner and in not releasing the Securities of the petitioners 2 to 5 as arbitrary and illegal.

The 1st petitioner is a Company, carrying on the business of manufacture and trade in Textiles. For the purpose of its business, the 1st petitioner company has availed a loan from the A.P. State Financial Corporation (for short, 'the Corporation'). The petitioners 2 to 5 stood as guarantors for due repayment of the loan. The said loan (Loan Account No. 63-9161) had become irregular and in the circumstances the 1st petitioner sought repayment of the amounts due under One Time Settlement Scheme. The request of the 1st petitioner was accepted and the Corporation approved the O.T.S. Scheme under which the 1st petitioner had to pay Rs.1,29,90,654/- as full and final settlement of all dues. In pursuance thereof, the 1st petitioner having paid a sum of Rs.90 lakhs, sought a further deduction of OTS Account. The Board of Directors of the 1st respondent Corporation in their meeting held on 19-11-2004 resolved as under :

> *"Resolved to reduce the OTS amount from Rs.1,29,90,654/- to Rs.1,10,00,000/- (including the amount of Rs.90.00 lakhs already paid) payable within 30 days from the date of communication of decision.*

If the revised crystallized amount is not paid within 30 days, reliefs granted shall be cancelled and the unit is liable to pay the entire balance outstanding amount in the loan account with further interest thereon at prevailing rate from 01.02.2000.

Further resolved to waive an amount of Rs.50,06,036/- outstanding in the loan account towards interest as on 31.01.2000 without charging further interest thereon from 01.02.2000."

Accordingly, the Corporation by letter dated 20-11-2004 informed the 1st petitioner company to pay a sum of Rs.110.00 lakhs including the amount of Rs.90 lakhs already paid, within 30 days from the date of communication of the said decision, failing which the relief granted under the O.T.S. Scheme shall stand cancelled and the entire balance outstanding will be recovered with further interest from 1-2-2000. In terms of the said letter, it is not in dispute that the 1st petitioner paid a sum of Rs.20 lakhs on 20-12-2004 i.e., within the stipulated time.

However, by letter dated 14-12-2004, which was received on 22-12-2004, the 1st petitioner was informed by the Corporation that the concession offered earlier reducing the O.T.S. amount payable to Rs.110.00 lakhs had been withdrawn in view of certain administrative developments and accordingly the 1st petitioner was called upon to pay Rs.39,90,654/- towards balance approved O.T.S. amount and to close the O.T.S. account by 31-12-2004 positively failing which the Corporation will take steps for sale of the primary and collateral security properties to realise the dues. In the said letter, it was also stated that the said fact was already informed to the 1st petitioner by letter dated 30-11-2004.

The petitioners state that the letter dated 30-11-2004 has never been received by them. Even the letter dated 14-12-2004 was received only on 22-12-2004 after the entire amount as required under the letter dated 20-11-2004 was paid before the due date specified. The petitioners also plead that since the entire amount had already been paid under the O.T.S. Scheme approved by the Board of Directors of the 1st respondent Corporation, the 1st petitioner company sought release of securities given by the petitioners 2 to 5 and also requested to issue a No Due Certificate. In response, the Corporation by letter dated 20-12-2004 while

acknowledging the receipt of Rs.20 lakhs, called upon the 1st petitioner to pay the balance approved O.T.S. amount of Rs.19,90,654/- immediately so as to close the loan account and to enable them to release the documents. Similar letters were addressed by the 1st respondent Corporation on 28-4-2005 and 3-5-2005 calling upon the petitioners to close the loan account on or before 9-5-2005 otherwise the properties which were offered as collateral security will be put to sale without further notice by 18-5-2005. Aggrieved by the said action, this writ petition is filed.

The learned Counsel for the writ petitioners contends that the respondents having accepted the petitioners' request for reducing the O.T.S. amount to Rs.110 lakhs as full and final settlement of all dues and having received the entire balance amount, cannot unilaterally vary the earlier decision and claim additional amounts. The learned Counsel further contends that the Corporation being an instrumentality of the State is expected to act fairly and reasonably and is also bound by the principles of promissory estoppel and therefore having decided the amount payable they cannot alter the same to the detriment of the petitioners.

On behalf of the respondents, the Assistant General Manager of the A.P. State Financial Corporation, Ramachandrapuram Branch filed a counter-affidavit stating that the respondent Corporation sanctioned a term loan of Rs.123 lakhs on 31-3-1995 in favour of the 1st petitioner for establishing a unit for printing and dying of sarees. In pursuance thereof, the respondent Corporation disbursed a sum of Rs.90,66,455/- in favour of the 1st petitioner Company. In terms of the request made by the 1st petitioner, the respondent Corporation having considered its request for the closure of the loan account on One Time Settlement basis, called upon the 1st petitioner to remit a sum of Rs.1,29,90,654/- inclusive of the down payment of Rs.19.60 lakhs. Out of the said amount, Rs.45.47 lakhs was required to be paid on or before 21.8.2000 and the balance shall be paid in two quarterly instalments of Rs.42,21,827/-. The Corporation has also agreed to waive interest outstanding of Rs.30,83,789/- as on 31-1-2000 without charging further interest thereon. However, the 1st petitioner failed to pay the amounts as per the One Time Settlement and consequently the Corporation has seized the assets of the Company on 20-08-2001.

Subsequently, the 1st petitioner came forward with a request to reduce the amount payable under the O.T.S. Crystallised Liability to a sum of Rs.90 lakhs instead of Rs.1,29,90,654/-, as accepted by the Board of Directors of the respondent Corporation. The same was placed before the Board of Directors in the meeting held on 16-9-2004. The Board of Directors rejected the request and decided to stand by the earlier decision taken while approving the O.T.S. Package for a sum of Rs.1,29,90,654/-. The said decision was duly communicated to the petitioner. Notwithstanding the same, the petitioner once again requested to settle the loan amount by accepting the payment of a sum of Rs.10 lakhs to 15 lakhs in addition to the sum of Rs.90 lakhs already paid. The said request was considered by the Board of Directors in its meeting held on 19-11-2004 in which it was decided to reduce the OTS amount initially agreed i.e., from Rs.1,29,90,654/- to Rs.1,10,00,000/- inclusive of the sum of Rs.90.00 lakhs already paid. The balance was liable to be paid within a period of 30 days from the date of communication of the decision. The decision was duly communicated to the petitioners by letter dated 20-11-2004. However, in the meeting of the Board of Directors held on 13-12-2004 it was decided to withdraw the relief granted earlier due to administrative reasons. Accordingly, the Corporation by letter dated 14-12-2004 informed the petitioners with regard to the change of the decision taken with regard to the OTS crystallized amount owing to certain administrative developments. The action of the respondents in revising its earlier decision due to administrative developments is neither arbitrary nor illegal. Hence, the writ petition is misconceived and is liable to be dismissed.

The learned Counsel for the respondent Corporation while reiterating the contentions raised in the counter-affidavit, also raised an objection as to the maintainability of the writ petition while relying upon the decisions of the Supreme Court in STATE FINANCIAL CORPN. v. M/s. JAGADAMBA OIL MILLS and KARNATAKA STATE INDUSTRIAL INVESTMENT & DEVELOPMENT CORPORATION LTD. v. CAVALET INDIA LIMITED & OTHERS.

As can be seen from the material on record, it is not in dispute that the Board of Directors of the 1st respondent Corporation in the meeting held on 19-11-2004 resolved to reduce the approved O.T.S. amount from Rs.1,29,90,654/- to Rs.110 lakhs payable within 30 days from the date of communication of the decision. The

said decision of the Board was informed to the petitioner by letter dated 20-11-2004. It is also not in dispute that in terms of the said decision of the Board, the balance of Rs.20 lakhs was paid by the petitioners on 20-12-2004 within the period of 30 days mentioned under the letter dated 20-11-2004. The Corporation does not dispute the said payment, but pleads that much prior to that the Board of Directors in its meeting held on 13-12-2004 revised its earlier decision dated 19-11-2004 due to administrative developments thereby withdrawing the relief granted to the petitioners with regard to the crystallized O.T.S. amount. It is also claimed that by letter dated 30-11-2004, sent by Certificate of Posting, the petitioners were informed about the proposal to withdraw the earlier concession offered and were requested to pay balance approved O.T.S. amount of Rs.39,90,654/- as per the terms and conditions of the originally approved O.T.S. The case of the petitioners is that they never received the letter dated 30-11-2004 and that they came to know about the revised decision of the Board of Directors only on 22-12-2004, on which date they received the subsequent letter dated 14-12-2004 sent by the Corporation by registered post. Even assuming that the petitioners were not aware of the revised decision of the Board of Directors of the 1st respondent Corporation and they paid the entire balance amount as per the earlier decision of the Board, communicated to them by letter dated 20-11-2004, the question is whether the principles of promissory estopple applies to the case on hand and whether the Corporation is estopped from going back on its earlier decision dated 19-11-2004.

It is to be noted that, admittedly, the petitioners, having availed the financial facility from the Corporation, had committed default in repaying the amounts. The One Time Settlement proposal made by the 1st petitioner Company was approved by the Corporation during August, 2000 for a sum of Rs.1,29,90,654/-, out of which the petitioners could pay Rs.90 lakhs beyond the time stipulated and sought for reducing the approved O.T.S. amount to Rs.90 lakhs which was already paid by them. May be that, the Board of Directors, having considered the said request, initially decided to reduce the approved O.T.S. amount to Rs.110 lakhs. However, it cannot be said that the Board cannot revise its own decision. As a matter of fact, the One Time Settlement itself is a concession granted to the defaulted loanees under a

Scheme. Nothing has been placed before this Court to show that the said scheme has any statutory force. Hence, the petitioners cannot claim to have acquired any legal right to enforce the One Time Settlement accepted by the Corporation, much less the relief granted in reducing the crystallized O.T.S. amount. It is also relevant to note that it is not as if by virtue of the later decision of the Board, the liability of the petitioners exceeded the originally approved O.T.S. amount of Rs.1,29,90,654/-. Having considered the request made by the petitioners, the Board though initially decided to reduce the said amount to Rs.110 lakhs, subsequently revised the said decision and decided to fix the crystallized liability as per the originally approved O.T.S. It is nothing but an administrative decision taken by the Board keeping in view the over all interest of the Corporation.

It is also relevant to note that to that effect the Board has passed a resolution in its meeting on 13-12-2004. Such a decision, which is purely administrative in nature, cannot be found fault with on the ground that it was decided unilaterally without notice to the petitioners. Hence, I do not find any substance in the contentions of the petitioners that the decision of the respondents is arbitrary, illegal and in violation of the principles of natural justice.

Undoubtedly, the petitioners are bound by the decision of the Board of Directors of the Corporation dated 13-12-2004 and therefore liable to pay the balance of Rs.19,90,654/-. In the absence of any allegation of mala fides and particularly when the action of the Corporation cannot be said to be in violation of any statutory provision or unreasonable, this Court in exercise of jurisdiction under Article 226 of the Constitution of India, will not sit in appeal and will not substitute its judgment to the decision of the Corporation. In this context, it would be appropriate to note the following observations made by the Supreme Court in STATE FINANCIAL CORPORTAION vs. M/s. JAGADAMBA OIL MILLS :

> *"The fairness required of the Corporation cannot be carried to the extent of disabling them from recovering what is due to them. The matter can be looked at from another angle. The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such in the discharge of its functions, it is free to act according to its own light. The views it forms and decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its*

action is mala fide, even a wrong decision by it is not open to challenge. It is not for the Courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may, for the decision of the Corporation."

For the aforesaid reasons, the Writ Petition is devoid of any merit and the relief as prayed for cannot be granted.

However, having regard to the facts and circumstances of the case, the petitioners are granted liberty to pay the balance amount of Rs.19,90,654/- within a period of four weeks from today, in which event the loan account shall be closed and the securities offered by the petitioners 2 to 5 shall be released. It is made clear that, in case of default, it is open to the respondents to take appropriate steps in accordance with law for realisation of the amounts due.

The Writ Petition is accordingly disposed of. No costs.

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7th December, 2005.

Note:- CC in 3 days.

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